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UNCLAS SECTION 01 OF 03 JAKARTA 000475

SIPDIS

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SENSITIVE

FOR EAP/MTS; EB/TPP/IPR JBOGER
COMMERCE FOR 4430/BERLINGUETTE AND PETERS
COMMERCE PASS USPTO FOR URBAN AND FOWLER
DEPT PASS USTR FOR DKATZ, JGROVES, RBAE, CCOLLEY

E.O. 12598: N/A

TAGS: [ECON](#) [ETRD](#) [KIPR](#) [ID](#)
SUBJECT: INDONESIA IPR - ANNUAL SPECIAL 301 SUBMISSION

Ref: a) State 07944; b) Jakarta 00011

¶1. (SBU) Summary: Since Indonesia's upgrade to the Special 301 Watch List in November 2006, the Government of Indonesia (GOI) has continued to make steady progress towards improving its enforcement and protection of intellectual property rights (IPR). A National Intellectual Property (IP) Task Force now holds regular interagency coordination meetings, and President Yudhoyono (SBY) signed a decree in November 2006 committing the GOI to legalize all its computer software. Parliament passed a new Customs Law on November 15 that, when fully implemented, will provide ex officio powers for Customs Officials to seize suspected infringing products. Jakarta Metropolitan Police continue to elicit praise from local and regional International Intellectual Property Association (IIPA) representatives for raids on notorious malls, vendors, distributors and factories. The Ministry of Industry's Optical Disk Factory Monitoring Team (ODFMT) inspected registered factories in November 2006 and February 2007 and issued initial warning letters to some 12 optical disk (OD) factories. The Ministry of Industry (MOI) plans to assign full-time staff to the ODFMT, conduct more regular inspections (including inspections after hours), and begin sanctioning non-compliant factories. A recent Supreme Court ruling in favor of the company Intel in a trademark infringement case bodes well for future cases.

¶2. (SBU) Summary, continued. Despite these steps, the GOI needs to further improve the operations of the ODFMT and involve the police more closely in the ODFMT's operations. It also needs to step up prosecutions and deterrent convictions of IPR violators and combat book piracy and pharmaceutical counterfeiting. But the GOI is steadily taking ownership over the IPR issue, and our interactions with Indonesia on the issue have grown less confrontational and more collaborative. To further encourage this important U.S. policy success, we recommend that Indonesia remain on the Watch List for the entire 2007 Special 301 regular cycle. End Summary.

¶3. (SBU) In response to Ref A, we reviewed this year's Special 301 submissions from the GOI, IIPA, Intel, PhRMA, and the Phillip Morris Company. In general, we agree with their data, characterizations, and assessments of the state of IPR protection and enforcement in Indonesia. Piracy and counterfeiting rates remain high and, although improving, enforcement remains weak. At the same time, GOI engagement and political will continue to improve and are gaining their own momentum.

National IP Task Force Remains Active

¶4. (SBU) According to GOI contacts, The National IP Task Force continues hold regularly scheduled quarterly working level meetings, as well less frequent senior and Ministerial-level meetings. At the working level, the Task Force has developed a national IP strategy

and strengthened data collection and interagency coordination. However, the lack of a formal budget continues to hamper the Task Force, and it must rely on limited funding from the Ministry of Justice Directorate General for IPR. Nevertheless, the Task Force's regular interagency meetings, particularly those of senior and ministerial level officials, are encouraging greater GOI focus on IPR. Following the first Task Force meeting last year, for example, the Minister of Justice and National Police Chief collaborated in developing a clever, animated TV spot emphasizing the costs of piracy on Indonesia's culture and creative arts.

SBY Leads Efforts to Legalize GOI Software

¶5. (SBU) There are other recent examples of growing GOI initiative and high-level political will to improve IPR protection. On November 13, SBY signed a decree establishing an Information Communication Technology National Team. The team consists of academics, business leaders and GOI officials and aims to create an IT regulatory regime that can contribute to economic growth, job creation and poverty alleviation. One of the ICT National Team's stated objectives is to work towards legalizing all government software, regardless of whether it is open source or licensed. Further, the Team will also pursue approaches to cracking down on the use of pirate software in internet cafes, universities and the private businesses. The ICT team will report directly to President SBY and work out of an office at the Ministry of Communication and Information Technology.

¶6. (SBU) Two months after SBY signed the decree, Minister of Communication and Information Sofyan Djalil signed an MOU with PT. Microsoft Indonesia, under which the software maker will help GOI ministries legalize and upgrade their MS Windows products at a significantly discounted price. Although there has been some public

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criticism of the MOU, including by State Minister for Research and Technology Kusmayanto Kadiman, SBY has stood behind the agreement. PT Microsoft Indonesia President Director Tony Chen recently told us he was "astonished" by the GOI's growing commitment to legalize its software and recommended we encourage the GOI by maintaining Indonesia on the Special 301 Watch List.

Customs Law Enacted with Ex Officio Powers

¶7. (SBU) Parliament passed a new Customs Law on November 15, 2006, that, when fully implemented, will provide ex officio powers for Indonesian Customs officials to seize suspected infringing products without a court order. The new law retains ex officio powers that existed in the old law, but also clears up court jurisdictional issues that had blocked their implementation. Indonesia Customs expects to promulgate the new law's implementing regulations, including those pertaining to ex officio powers, by the end of ¶2007.

Jakarta Police Sustaining Enforcement

¶8. (SBU) As noted in the GOI's submission, and confirmed by local IIPA representatives, the Jakarta Metropolitan Police have sustained enforcement actions against malls, vendors, distributors and factories of pirated optical discs. Ratu Plaza, Indonesia's most notorious modern market for pirated ODs, has been the subject of repeated raids, and one Motion Pictures Association (MPA) regional representative told us recently that some of Ratu's vendors have given up or moved to other, less-centrally located malls. That same MPA representative described the Jakarta Police's continuing police cooperation as "brilliant" and he too recommended Indonesia remain on the Watch List. Our EEB-funded senior IPR technical advisor has been instrumental in training and encouraging the Jakarta Police to step up their IPR enforcement. Looking forward, the advisor will work to encourage greater police collaboration with the ODFMT and prosecutors, as well as greater police enforcement actions beyond the boundaries of metropolitan Jakarta.

Monitoring Team Yielding Some Results

¶9. (SBU) As noted in ref b, the ODFMT, with training and planning support from our second EEB-funded advisor, conducted monitoring visits to all registered optical disc factories in November 2006. The MOI subsequently sent 12 warning letters to factories observed to have irregularities. However, the letters highlighted only minor infractions, and there has been little ODFMT follow-up. Although the visits revealed weaknesses in the ODFMT's capacity and security procedures, they also gleaned useful baseline data on the capacity and activities of registered optical disc factories. More importantly, the visits allowed the ODFMT to collect forensic exemplars from a majority of the known production machines in Indonesia's registered factories. The International Federation of the Phonographic Industry (IFPI) continues to analyze these exemplars in its forensic laboratory in London, and already they are yielding important information.

¶10. (SBU) The ODFMT still requires considerable institution and capacity building to be fully effective. The ODFMT does not have full-time monitors, and relies largely on MOI and Police officials temporarily seconded from other positions. It needs direct support from the police, particularly if it is to conduct visits at night and to well guarded factories. The ODFMT also needs to implement a more credible system of warning and sanctioning factories in violation of laws and regulations.

¶11. (SBU) MOI Director General for Downstream Chemical Industries Benny Wahyudi told us on February 20 that the ODFMT visited seven factories on February 17, and inspected the five that were open and operating. He promised to provide us with the results of those visits as soon as they were compiled. Wahyudi agreed that the Monitoring Team needs at least one full-time staff member. He noted, though, that this person might have to be a contractor, as the MOI did not have a specific budget and position set aside to staff the ODFMT. Wahyudi also agreed that the MOI would need to work closer with the police and develop a more effective system of warning and sanctions. He suggested that the Embassy senior advisor for the ODFMT would be instrumental in helping the MOI address these challenges.

Glimmer of Hope in Intel Case

¶12. (SBU) The Supreme Court's February 1 ruling in favor of Intel in JAKARTA 00000475 003 OF 003

the Intel Jeans case is also a favorable development. In the case, the court cancelled the trademark of a local brand of jeans, Intel Jeans, and ruled that Intel is entitled to trademark protection as a well known brand. The ruling bodes well for the Supreme Court's upcoming decision in the appeal of Intel's Panggung case (the Indonesian firm PT Panggung produces a number of electronics products under the registered trademark "Intel"). While the Commercial Court's previous rulings against Intel in the Panggung case have been setbacks, Intel's legal counsel recently described the case as an aberration in the Commercial Court's otherwise respectable record in handling civil IPR cases, particularly those involving trademarks.

Significant Concerns Remain

¶13. (SBU) Despite the clear momentum on IPR issues, there are remaining concerns. Indonesia's record on IPR prosecutions remains poor. Frequent prosecutor rotations, lack of transparency, and corruption make this a daunting task; and high level political will and support will be critical to making headway on IPR convictions and prosecutions. Pharmaceutical counterfeiting and book piracy also remain largely unchecked. GOI officials tell us frequently that they consider pharmaceutical counterfeiting to be a serious health concern for the country, as well as a potential rallying point for greater public support for IPR protection and enforcement.

Key GOI officials have endorsed a University of Indonesia study revealing alarming pharmaceutical counterfeiting rates and its high

cost to the Indonesian economy. The GOI, however, has yet to effectively engage the pharmaceutical industry on these issues. Book piracy remains rampant in universities and local bookshops. Indonesia has yet to develop an association or other means through which publishers and authors can collect and distribute book royalties. The GOI would very likely welcome U.S. technical assistance in this area.

Watch List is the Best Option

¶14. (SBU) Over the past two years, the combination of a reform-minded government in Indonesia and five regular or out-of-cycle Special 301 reviews has done much to change our interactions with the GOI on IPR issues. GOI leaders are pursuing initiatives to promote IPR that were only short time ago beyond our expectations. At the same time, our relationships with working level contacts have become much more collaborative, particularly following Indonesia's removal from the Priority Watch List last November. Four months later, although much work remains, the GOI is moving forward on IPR issues largely under its own steam. With the GOI taking increasing ownership of the issue and steadily improving its IPR enforcement and protection, we believe a third consecutive OCR would be counterproductive. Accordingly, Embassy Jakarta recommends strongly that Washington agencies retain Indonesia on the Special 301 Watch List for the 2007 regular Special 301 cycle, with no OCR.

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